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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,621	01/10/2002	Ugo Siepel	294-109 PCT/US	7146

7590

06/29/2005

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EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/936,621

Applicant(s)

SIEPEL ET AL

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 9-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Upon further consideration, the 112 first paragraph rejection of claim 1 is hereby withdrawn.

Claims 1-3, 9-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Hulle et al in view of Jeffcoat et al.

Van Hulle et al disclose methods for preparing puffed snack products. The products are formed from gelatinized doughs whose total amylopectin starch content ranges between about 30-95%. The method comprises the steps of mixing amylopectin starch together with other ingredients to form a dough, cooking the dough in an extruder to gelatinize the dough, shaping the dough into pieces, drying the pieces and puffing the pieces. (see col. 5 lines 1-13 and col. 7)

Van Hulle et al do not disclose the amylopectin starch is non-cereal amylopectin starch obtained from potato, heating the composition to a temperature above the glass transition temperature to expand the composition comprising the amylopectin starch and cooling to below the glass transition temperature.

Jeffcoat et al disclose a stabilized, crosslinked waxy potato starch.

It would have been obvious to one skilled in the art to use other known source of high amylopectin-containing starch to make the amylopectin dough disclosed by Van Hulle et al. It would have been obvious to one skilled in the art to use waxy potato starch such as the one disclosed by Jeffcoat et al when one wants the flavor of potato and still meeting the amylopectin content requirement. As to the heating to above glass transition temperature, the dough in the Van Hulle et al process is heated to gelatinize the dough; thus, it is obvious the dough is heated to above the glass transition

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temperature. As to the expanding, the dough is heated just as claimed; thus, it is obvious the composition is expanded. The dough is dried at lower temperature; thus, it is obvious the dough is cooled to below the glass transition temperature. The dough pieces are puffed which will cause more expansion and the product is a snack that has a glazed, sugar coating. Since the dough is heated and expanded, the product is a heat expanded foodstuff.

In the response filed May 10, applicant submits a 132 declaration to show unexpected result in an attempt to overcome the 103 rejection. The declaration is not found to be persuasive. Page 2 of the declaration states, the method disclosed by van Hulle et al does not have the desired expansion properties. The statement is not supported by factual evidence. The declaration does not have any comparative showing or testing to demonstrate that the method disclosed in van Hulle does not result in expansion of the food composition. The statements made about the use of pregelatinized starch in the van Hulle process is not understood and the relevancy of such statements to the rejection is not seen. The composition disclosed by van Hulle et al contains other ingredients besides the pregelatinized starch and the claims do not exclude pregelatinized starch. The declaration also states the expansion in the process of the present invention takes place during heating and is not realized in the initial dough composition. The declaration has not shown that expansion takes place in the initial dough composition in the van Hulle process. Furthermore, even if expansion does take place initially, the claimed process and product still does not define over van Hulle because the claims do not exclude other expansion. The claims require

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expansion by heating; van Hulle et al disclose heating the food composition. Thus, it is obvious that expansion will also occur and the declaration has not shown anything to the contrary. On page 3, the declaration states Jeffcoat et al show that amylopectin potato starch derivatives are much higher in viscosity and expansion is inversely related to viscosity. This statement is not supported by factual evidence. Furthermore, even if this is true, it still does not define over the prior art because the claims do not place any limitation on the degree of expansion. Even if the expansion is low, it still meets the claimed limitation. Furthermore, the statement seems to contradict the following statements because the declaration goes on to state that amylopectin potato starch gives better expansion than regular potato starch and waxy maize starch. The contention of unexpected result is not found persuasive because there is no limitation on the degree of expansion. Additionally, the declaration does not contain any comparative showing of expansion between the product of the claimed method and the van Hulle et al method.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 24, 2005

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*